

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004,

Plaintiffs,

v.

DEPARTMENT OF STATE
2201 C Street, N.W.
Washington, DC 20520,

Defendant.

No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the immediate processing and release of agency records requested by Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (collectively “ACLU”) from Defendant U.S. Department of State (“DOS”).

2. Plaintiffs submitted a FOIA request (“the Request”) to DOS seeking twenty-three specifically identified DOS embassy cables pertaining to the United States’ diplomatic response to foreign investigations of United States abduction, interrogation, detention, and rendition practices; the federal government’s efforts with respect to the prosecution and release of Guantanamo detainees; the federal government’s use of unmanned aerial vehicles; and the

diplomatic response to President Obama's decision to oppose the release of photographs depicting U.S. interrogations of persons suspected of terrorism. The Request was submitted on April 12, 2011.

3. Eight weeks have elapsed since the Request was filed and DOS has not released the records requested. Plaintiffs now ask this Court to order the Defendant immediately to process all records responsive to the Request.

Jurisdiction and Venue

4. This Court has both subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

5. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

6. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the American government acts in compliance with the Constitution and laws, including its international legal obligations. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights.

7. Plaintiff American Civil Liberties Union Foundation is a separate § 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

8. Defendant DOS is a Department of the Executive Branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Factual Background

9. On November 28, 2010, five newspapers, the *New York Times*, the *Guardian*, *Le Monde*, *El Pais*, and *Der Spiegel*, began publishing a series of articles based on documents alleged to be State Department diplomatic cables. Certain documents that were alleged to be State Department cables were posted in their entirety on the internet sites of the *New York Times* and other newspapers.

10. The documents that the newspapers described as embassy cables were originally provided by a whistle-blowing organization named WikiLeaks, which maintains an internet site where certain purported State Department cables have been posted.

11. In the months following November 28, 2010, articles about purported State Department diplomatic cables have appeared in newspapers throughout the country and the world. During this period, many additional documents that are alleged to be State Department diplomatic cables have been posted on the internet sites of WikiLeaks and of various newspapers and media outlets.

12. On November 29, 2010, Secretary of State Hillary Clinton stated that she would “not comment on or confirm what are alleged to be stolen State Department cables.” Remarks to the Press on the Release of Confidential Documents, Secretary of State Hillary Rodham Clinton (Nov. 29, 2010), <http://www.state.gov/secretary/rm/2010/11/152078.htm>. Secretary Clinton then stated that “the United States deeply regrets the disclosure of any information that was intended to be confidential.” *Id.* Secretary Clinton then stated that “we are taking aggressive steps to hold responsible those who stole this information.” *Id.*

13. On March 1, 2011, the Department of Defense (“DOD”) issued a Charge Sheet specifying charges under the Uniform Code of Military Justice (“UCMJ”) against Private First Class Bradley E. Manning. The Charge Sheet included the allegation that Private First Class Manning did “steal, purloin, or knowingly convert to his use or the use of another, a record or thing of value of the United States or of a department or agency thereof, to wit: the Department of State Net-Centric Diplomacy database containing more than 250,000 records belonging to the United States government . . .”

14. In spite of the urgent national interest and extensive media coverage surrounding the alleged diplomatic cables, at the time this FOIA request was made, DOS had not yet informed the American people whether the disclosed documents referred to actual federal government activity. Nor has it done so to date.

FOIA Request

15. On April 12, 2011, the ACLU submitted the Request for a select number of leaked embassy cables. Each one of the twenty-three requested cables was specifically identified by its ID tag, originating embassy, subject line, and date of transmission. The Request was submitted to the designated FOIA office of DOS.

16. The requested cables relate to the United States’ diplomatic response to foreign investigations of United States abduction, interrogation, detention, and rendition practices; efforts by the Federal government to prosecute or release former and current Guantanamo detainees; the United States’ use of unmanned aerial vehicles; and the diplomatic efforts surrounding President Obama’s decision to oppose the release of photographs depicting U.S. interrogations of persons suspected of terrorism.

17. Plaintiffs sought expedited processing of the Request on the ground that there is a “compelling need” for these records, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged Federal Government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 22 C.F.R. § 171.12(b)(2). Plaintiffs also sought expedited processing on the ground that the records requested relate to a “breaking news story of general public interest.” *See* 22 C.F.R. § 171.12(b)(2)(i).

18. Plaintiffs sought a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 22 C.F.R. § 171.17(a).

19. Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 22 C.F.R. §§ 171.11(o), 171.15(c).

The Government’s Response to the Request

20. Although the Request has been pending for eight weeks, no records have been produced. Defendant DOS has not provided any basis for withholding responsive records.

21. By letter dated April 28, 2011, DOS acknowledged receipt of the Request but denied Plaintiffs’ application for expedited processing. In the same letter, DOS granted Plaintiffs’ application for a waiver of search and review fees on the basis of “news media” requester status. Defendant DOS deferred its decision on Plaintiffs’ application for a “public

interest” fee waiver, stating that it would decide the issue only after determining “whether the disclosure of any records responsive to [the] request is in the public interest.”

22. On May 4, 2011, Plaintiffs timely filed an administrative appeal of DOS’s denial of expedited processing.

23. On May 23, 2011, DOS denied Plaintiffs’ administrative appeal of DOS’s decision to deny Plaintiffs’ application for expedited processing.

Causes of Action

24. Defendant’s failure to make a reasonable effort to search for records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3), and DOS regulations, 22 C.F.R. § 171.12.

25. Defendant’s failure to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and DOS regulations, 22 C.F.R. § 171.12.

26. Defendant’s failure to grant Plaintiffs’ request for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and DOS regulations, 22 C.F.R. § 171.12(b).

27. Defendant’s failure to respond to Plaintiffs’ request for a waiver of search, review, and duplication fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii) and DOS regulations, 22 C.F.R. § 171.17(a).

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order the Defendant immediately to process all records responsive to the Request;
- B. Enjoin the Defendant from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiffs their costs and reasonable attorneys’ fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Arthur B. Spitzer

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